

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL CASE NO. 1:01cr88-1

UNITED STATES OF AMERICA,)	
)	
)	
vs.)	<u>ORDER</u>
)	
)	
THOMAS WOODHULL HICKS, IV.)	
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THIS MATTER is before the Court on the Defendant's Motion to Amend Judgment [Doc. 77].

On March 29, 2011, the Defendant was sentenced to a six-month term of imprisonment for violating the terms of his supervised release. [Judgment, Doc. 64]. At the time of the supervised release violation hearing, the Defendant was serving a sentence in state custody for related state probation violations. The Defendant now moves to amend the judgment so as to provide that the six-month term of imprisonment is to run concurrently with the state violation matter. [Doc. 77].

The Defendant filed a notice of appeal from the Court's Judgment on April 7, 2011. [Doc. 66]. Ordinarily, the filing of a notice of appeal divests the district court of jurisdiction over a case. See United States v. Wooden, 230 F. App'x 243, 244 (4th Cir. 1007). While a pending appeal does not

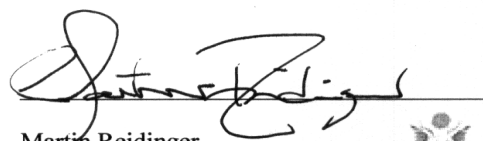
divest the district court of jurisdiction to consider a motion to correct a sentence under Federal Rule of Criminal Procedure 35(a), see Fed. R. App. P. 4(b)(3), such a motion must be filed within fourteen days after sentencing, see Fed. R. Crim. P. 35(a).

In the present case, the Defendant does not specify the Rule under which he is seeking relief. To the extent that the Defendant's motion can be construed as one to correct the judgment, the motion was filed well after the fourteen-day time period provided for in Rule 35(a). Therefore, unless and until the Defendant's appeal is dismissed or otherwise resolved by the Court of Appeals, the Court is without jurisdiction to entertain the Defendant's motion.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Amend Judgment [Doc. 77] is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Signed: July 12, 2011


Martin Reidinger
United States District Judge

